



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AK v Canada Employment Insurance Commission*, 2018 SST 1442

Tribunal File Number: GE-18-2117

BETWEEN:

**A. K.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Maria Marchese

HEARD ON: September 18, 2018

DATE OF DECISION: October 30, 2018

## **DECISION**

[1] The appeal is dismissed. The Appellant has not shown good cause for not filing his reporting cards within the period of time required by ss. 10 and 50 of the *Employment Insurance Act* (Act) and s. 26 of the *Employment Insurance Regulations* (the Regulations).

## **OVERVIEW**

[2] The Appellant made an initial claim for employment insurance sick benefits and a benefit period was established effective December 13, 2015. On March 5, 2018 the Appellant requested that his claim be antedated to December 13, 2015. On April 15, 2018 the Canada Employment Insurance Commission (Commission) advised the Appellant that benefits could not start on December 13, 2015 because he failed to show good cause for failing to file reporting cards throughout the entire period of the delay, from December 13, 2015 to March 5, 2018. The Appellant requested reconsideration of the Commission's decision and on May 23, 2018 the Commission maintained its decision. The Appellant appealed to the Social Security Tribunal (Tribunal) stating he was never told that he was required to file reports and only recently learned of that requirement.

## **PRELIMINARY MATTERS**

[3] During the course of the hearing the Appellant stated that he had additional medical documentary evidence covering the period of December 13, 2015 to March 5, 2018 which he provided to the Tribunal post hearing. The Commission was given an opportunity to make additional submissions to the new medical information submitted by the Appellant but it made no additional representations to the Tribunal.

## **ISSUES**

[4] Does the Appellant qualify to have his claim antedated to December 13, 2015?

1. Did the Appellant file his claimant reports late?

2. Does the Appellant have good cause for the delay in filing his claimant reports?

## ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision.

[6] Section 50(4) of the Act states that a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

[7] Section 26(1) of the Regulations addresses the issue of “prescribed time” and requires that a claim for benefits for a given week of unemployment in a benefit period must be made within three weeks after the week for which benefits are claimed.

[8] According to s. 10(5) of the Act, claims made after the period prescribed by s. 26(1) of the Regulations can be antedated if the claimant shows that there was good cause for the delay, throughout the entire period of the delay beginning on the earlier day and ending on the day when the claim was made.

[9] The Federal Court of Appeal has confirmed that a claimant is expected to “take reasonably prompt steps” to understand his obligations under the Act, and that there must be exceptional circumstances, taking into consideration all factors, to find that a claimant had “good cause” for his delayed application (*Canada (A. G.) v. Somwaru*, 2010 FCA 336).

[10] Once an initial claim for benefits is made and a benefit period is established, a claimant must make a claim for benefits for each week of unemployment in accordance with the requirements set out in s. 50 of the Act, in order for the claimant to be entitled to benefits. This is generally done by filing bi-weekly claim reports through Service Canada’s telephone or online reporting systems.

### **Issue 1: Did the Appellant file his claimant reports late?**

[11] The Tribunal finds that the Appellant filed his claimant reports late.

[12] Section 50(4) of the Act states that a claim for benefits for a week of unemployment in a benefit period shall be made within the “prescribed time”, which is stated in s. 26(1) of the Regulations as being within three weeks after the week for which benefits are claimed.

[13] An initial claim for benefits was established effective December 13, 2015 but the Appellant never submitted any claimant reports and was not paid any benefits. On March 5, 2018 the Appellant filed a request to antedate his claim to December 13, 2015 to allow him to receive benefits. During the Appellant's numerous conversations with the Commission and in his request for reconsideration the Appellant stated that he was not told he was required to complete reports in claiming benefits. At the hearing, the Appellant reiterated that he did not complete any claimant reports because he was not aware that any further action was needed from him after completing his online application. The Tribunal finds that the Appellant failed to file any reports within the timeframe prescribed by s. 26(1) of the Act. By the Appellant's own admission he did not file any claimant reports for benefits.

**Issue 2: Did the Appellant have good cause for the delay in filing his claimant reports?**

[14] The antedate provision in s. 10(5) of the Act requires the Appellant to prove he had good cause for his delay throughout the entire period of the delay. In order to show good cause for a delay in the filing of claimant reports, the Federal Court of Appeal has stated that a claimant must show that he or she acted as a reasonable and prudent person would have done in the same situation to ensure compliance with their rights and obligations under the Act (*Canada (A.G.) v. Kokavec*, 2008 FCA 307; *Canada (A.G.) v. Paquette*, 2006 FCA 309).

[15] According to s. 10(5) of the Act, claims made after the period prescribed by s. 26(1) of the Regulations can be antedated if the claimant shows that there was good cause for the delay, throughout the entire period of the delay beginning on the earlier day and ending on the day when the claim was made. In that regard, the Court has stated that a claimant is expected to "take reasonably prompt steps" to understand his obligations under the Act, and that there must be exceptional circumstances, taking into consideration all factors, to find that a claimant had "good cause" for his delayed application (*Canada (A. G.) v. Somwaru*, 2010 FCA 336).

[16] The Tribunal finds that the Appellant has not proven that he had good cause for not filing any claimant reports throughout the entire period from December 13, 2015 to March 5, 2018.

[17] The Commission submitted that the Appellant was given instructions about filing claimant reports on three occasions when he completed his online application: in the attestation

page; in the “Responsibilities” page; and in the “What’s Next” page. The Appellant was also advised, in the “Benefit Statement” sent to him, that he must submit his bi-weekly reports using the online reporting system. The Commission further submitted that the Appellant’s statement that he had been paid is unsubstantiated because he was never paid benefits, and there was insufficient information as to how the Appellant’s illness prevented him from filing his reports while being able to work in September 2016.

[18] The Appellant stated that: he believed he had been issued benefits without the need to complete claimant reports; he only learned he was never issued benefits when he applied for parental benefits in 2018; he believed no further action was needed by him after completing his application because his wife was looking after his affairs due to his health issues and she did not tell him he was not receiving benefits; he only learned that he had not received any benefits in 2015 when his wife told him in September 2016 that she had taken out a loan because no employment insurance benefits had been received. In the “Attestation for Sick Benefits” section of the Appellant’s online application, he stated he read and accepted the attestation conditions which included declaring, on his claimant reports, the days that he was not available for work due to his illness or incapacity, and that failure to do so may result in loss or repayment of benefits and/or penalties.

[19] The Tribunal finds that the Appellant has not shown “good cause” for his delay in filing his claimant reports between December 2015 and March 8, 2018. While the Appellant stated that he was not aware that he was required to submit claimant reports to receive benefit, the Tribunal finds that the Appellant was advised of his reporting obligations during his application process but failed to comply. The Tribunal finds that the Appellant attested to reading and accepting the sick benefits conditions, including the requirement to file reports. A reasonable person would have completed the reports needed to receive benefits, or would have sought clarification if he was unsure as to whether ongoing reports were needed.

[20] At the hearing, the Appellant stated he was suffering from a collapsed lung and stress beginning in December 2015 to September 2016 and while he was not hospitalized, he stated that he was under the care of his doctor whom he saw once per week to monitor the Appellant’s physical condition. The Appellant submitted documentary evidence as follows: 2 medical notes

from his family doctor authorizing him to be off work from May 20, 2015 to May 29, 2015 for illness and stress related reasons and stating that the Appellant was unable to work during 2015 and 2017 due to mental health issues; a June 13, 2017 psychologist's note outlining the Appellant's medical treatments from May 29, 2015 to September 13, 2016 (17 occasions) and from February 16, 2017 to August 15, 2017 (9 occasions) and clearance for the Appellant to resume regular duties effective September 2017. The medical notes submitted by the Appellant make no mention of treatment dates or particulars about the physical health issues the Appellant was being treated for between December 2015 and September 2016. The Appellant returned to work in September 2016, worked from September 2016 to January 2017 and was off again due to mental health issues. The Appellant stated that he did not apply for employment insurance benefits for his January 2017 layoff because he had not received benefits for the December 2015 to June 2016 period so he saw no reason to apply during his January 2017 incapacitation. The Appellant confirmed that he did not make any attempt to call Service Canada from September 2016 to December 2016. In January 2017 the Appellant visited a Service Canada centre and was directed to call the Commission about his claim. The Appellant tried calling the Commission but he was put on hold and hung up because the wait was too long to get through.

[21] The Tribunal finds that the Appellant's medical documentary evidence was vague and provides no support for the Appellant's statement that he was incapacitated and being treated weekly by the family doctor from December 2015 to September 2016 and therefore unable to address his employment insurance reporting obligations. Although the Appellant's family doctor's reports state that the Appellant was too depressed to work from 2015 to 2017, the Appellant returned to work in September 2016 and continued to work until he left in January 2017. The Tribunal finds that a prudent and reasonable person would have used the period of good health to put his employment insurance affairs in order by contacting the Commission to sort out his employment insurance payments. The Tribunal puts little weight to the family doctor's medical note given the contradictory comments between the Appellant's testimony of returning to work in January 2016 and the doctor's note that the Appellant was unable to work from 2015 to 2017.

[22] The Appellant was asked if there were any extraordinary circumstances that he was dealing with during the 27 month period of delay and he advised that there were mental and

physical health issues which prevented him from completing his reporting cards. The Tribunal finds that, while the Appellant may have suffered from health issues, those issues did not prevent the Appellant from returning to work on two occasions, in September 2016 and September 2017. A reasonable person would have immediately contacted the Commission in September 2016 after learning that sick benefits had never been paid during the December 2015 and September 2016 period, which the Appellant did not do. Instead, the Appellant resumed his employment and did nothing more from September 2016 to January 2017, at which time the Appellant did go to a Service Canada centre and called the Commission but failed to connect with the Commission because the wait time was too long. A reasonable person would have waited on the line until a Commission agent was available if that would have meant resolving his outstanding benefits issue or would have called back. The Tribunal finds that a reasonable and prudent person would not have waited 27 months. While the Appellant may have had periods of incapacitation, the documentary evidence does not support incapacitation for the entire period of the delay in filing the claimant reporting cards.

[23] The Tribunal further finds no evidence of any exceptional circumstances that prevented the Appellant from making enquiries about his rights and obligations or filing his claim reports throughout the entire 27 month period of delay from December 13, 2015 to March 5, 2018.

[24] The Tribunal finds the Appellant has not met the test for “good cause” set out in subsection 10(5) of the Act and, therefore, cannot be granted an antedate to now process his claim reports for the period commencing December 13, 2015 as if they had been made on time.

[25] The Tribunal finds the Appellant was late in filing his claimant reports (he never filed) and has failed to meet the onus on him to prove he had good cause for the entire period of delay in filing his claim reports and, therefore, his reports cannot be antedated pursuant to subsection 10(5) of the Act.

## **CONCLUSION**

[26] The appeal is dismissed.

Maria Marchese

Member, General Division - Employment Insurance Section

HEARD ON:	September 18, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. K., Appellant



## ANNEX

### THE LAW

#### *Employment Insurance Act*

**10 (1)** A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.

**(2)** Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

**(3)** Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

**(4)** An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

**(5)** A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

**(5.1)** A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or
- (c) the claim is made in any other circumstances set out in the regulations.

**(5.2)** A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

(b) the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

(7) A cancelled benefit period or portion of a benefit period is deemed never to have begun.

(8) A benefit period ends when any of the following first occurs:

(a) no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

(b) the benefit period would otherwise end under this section; or

(c) [Repealed, 2002, c. 9, s. 12]

(d) the claimant

(i) requests that their benefit period end,

(ii) makes a new initial claim for benefits under this Part or Part VII.1, and

(iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

(9) Whether or not the benefit period has ended, a request under paragraph 8(d) shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the

delay throughout the period beginning on the earlier day and ending on the day when the request was made.

**(10)** A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

**(a)** confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

**(b)** in receipt of earnings paid because of the complete severance of their relationship with their former employer;

**(c)** in receipt of workers' compensation payments for an illness or injury; or

**(d)** in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

**(11)** A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

**(12)** If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

**(12.1)** If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

**(13)** If, during a claimant's benefit period,

**(a)** regular benefits were not paid to the claimant,

**(b)** benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and

**(c)** the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

**(13.1)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

**(13.2)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

**(13.3)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.4)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.5)** A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

**(13.6)** A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

**(13.7)** A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

**(14)** Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

**(14.1)** The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

**(15)** Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

**50 (1)** A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

**(2)** A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

- (3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.
- (4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.
- (5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.
- (6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.
- (7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.
- (8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.
- (8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.
- (9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.
- (10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

### ***Employment Insurance Regulations***

**26 (1)** Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.